

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES MCDONALD,

Plaintiff,

v.

ONEWEST BANK, FSB, *et al.*,

Defendants.

No. C10-1952RSL

ORDER GRANTING IN PART  
MOTION TO COMPEL

This matter comes before the Court on “Plaintiff’s Second Motion to Compel to Produce.” Dkt. # 96. Having reviewed the memoranda, declarations, and exhibit submitted by the parties and the remainder of the record, the Court finds as follows:

Plaintiff seeks production of documents that are responsive to his first set of discovery requests that were served on defendants in April 2011. These requests have been the subject of numerous discussions and two prior motions. On June 13, 2011, the Court directed defendants to respond to plaintiff’s first requests for production within fourteen days. Certain documents, some heavily redacted, were produced at the end of June 2011, along with a statement that other requested documents were not known to exist and/or that counsel’s “contact at OneWest” was still waiting to hear from “someone internally at OneWest.” Dkt. # 99, Ex. 1.

After plaintiff filed this second motion to compel, defendants supplemented their production. This second production included documents that had been produced in June 2011,

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1 but with a materially different redaction pattern. No privilege log or explanation for the  
2 redactions was provided. Plaintiff addressed this belated production in reply.

3 **Requests for Production No. 1 and 5**

4 Defendants assert that, after a diligent search, they have found no documents that  
5 are responsive to these requests. Plaintiff does not contest this assertion, but reserves the right to  
6 challenge its accuracy in the future. No further production will be ordered at this time.

7 **Requests for Production No. 2, 3 10, and 15**

8 Defendants assert that there are no documents responsive to these requests and/or  
9 that they have produced all responsive documents. Plaintiff points out, however, that one would  
10 reasonably expect OneWest, as the servicer of the Note and the successor of IndyMac Mortgage  
11 Services, to have possession, custody, or control of at least some of the documents requested if  
12 they existed in the first place. As noted in an earlier order, plaintiff is entitled to seek documents  
13 showing the chain of possession of the Note and other indicia of ownership so that he may test  
14 the veracity of defendants' declarations. Defendants are forewarned that, in the context of this  
15 litigation, a bare declaration asserting a fact that one would reasonably expect to be supported by  
16 documents may not be as persuasive as in other contexts. No further production will be ordered  
17 at this time.

18 **Requests for Production No. 4 and 12**

19 Defendants assert that all documents responsive to these requests for production  
20 have been produced. Plaintiff has been unable to identify which, if any, of the produced  
21 documents are copies of the servicing agreements between OneWest and the current or previous  
22 owners of the Note (Request for Production No. 4) or exhibits to agreements between the FDIC,  
23 IMB Holdco LLC, and OneWest (Request for Production No. 12). Because the documents were  
24 not produced as kept in the ordinary course of business, defendants shall specifically identify  
25 which, if any, of the documents produced at the end of June 2011 and/or on February 17, 2012,  
26

1 are responsive to these requests. Fed. R. Civ. P. 34(b)(2)(E)(i).

2 **Request for Production No. 6**

3 Plaintiff requested a copy of “all entries noted within the MERS MIN SUMMARY  
4 authenticated as unaltered by a direct MERS employee.” The entries were produced, but they  
5 were not authenticated as requested. Rule 34 does not require the producing party to alter  
6 documents before producing them. The Court will not impose such a requirement here.

7 **Requests for Production No. 7, 8, 9, and 11**

8 Responsive documents have been produced.

9 **Requests for Production No. 13 and 14**

10 Although defendants produced responsive documents after plaintiff filed this  
11 motion to compel, plaintiff argues that they have been improperly redacted. It appears that the  
12 redactions to Form 1034 are intended to protect the identities and financial information of  
13 borrowers other than Mr. McDonald. Defendants shall amend their supplemental discovery  
14 responses to justify their redactions. The Form 1036 provided by defendants has not been  
15 redacted.

16  
17 Plaintiff’s request for monetary sanctions contains two components. To the extent  
18 plaintiff is requesting an award of expenses under Fed. R. Civ. P. 37(a)(5)(A), it is true that  
19 defendants provided much of the requested discovery only after plaintiff was forced to file this  
20 second motion to compel. Plaintiff, as a *pro se* litigant, is not entitled to recover attorney’s fees,  
21 however, so his expenses may be limited. If a statement of expenses is provided as set forth  
22 below, defendants must then have an opportunity to show that their belated production was  
23 substantially justified and/or that other circumstances make an award unjust.

24 To the extent plaintiff is seeking sanctions for false statements, the request is  
25 premature. Whether defendants are hiding documents that would have been responsive to  
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1 Requests for Production No. 2, 3, 10, or 15 or have misrepresented their role in plaintiff's loan  
2 cannot be determined on the existing record. Defendants shall be given an opportunity to  
3 identify the documents they say were produced in response to Requests for Production No. 4 and  
4 12 before the Court determines whether their representations regarding those requests were  
5 accurate.

6  
7 For all of the foregoing reason, plaintiff's second motion to compel responses to  
8 his first set of requests for production is GRANTED in part. Defendants shall, within fourteen  
9 days of the date of this order, amend their supplemental responses to Requests for Production  
10 No. 4, 12, 13, and 14 as set forth above. Defendants shall also amend their discovery responses  
11 to justify the redactions to the MERS membership applications that have been produced.

12 Plaintiff may, within twenty-one days of the date of this order, provide a statement  
13 of expenses incurred in making this second motion to compel and/or make additional arguments  
14 regarding defendants' compliance with the Court's discovery orders. Any such submission shall  
15 be noted on the Court's calendar for consideration on the second Friday after filing.

16 Dated this 18th day of April, 2012.

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18 Robert S. Lasnik  
19 United States District Judge  
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